

### REMARKS

In the Office Action, the Examiner apparently withdrew the objection to the specification based on an allegedly non-descriptive title. The Examiner also apparently withdrew the objection to Claims 3, 5, 9 and 11 based on the recitation in Claim 3 of the phrase “a cover plate having a rear surface for contacting a container”.

Applicant has amended Claim 3 and added new Claims 12-17. The amendments and new claims do not contain any new matter. Support for the amendments to Claim 3 find support in, e.g., Figs. 8 and 10. Support for new Claim 12 can be found in, e.g., Figs. 6 and 8; support for new Claim 13 can be found in the published application at, e.g., ¶¶ [0001] and [0009]; and support for new Claim 14 can be found in, e.g., Figs. 8-10. New Claim 15 finds support in the claims as originally filed as well as in Figs. 8 and 10. New Claims 16-17 are directed towards methods of using a container cover and find support in the claims as originally filed as well as in the published application at, e.g., ¶¶ [0051] and [0064] – [0070].

Turning to substantive matters, the Examiner maintained the rejection of Claims 3, 5, 9 and 11 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 1,857,853 to McMann (“McMann”). In response, has amended Claim 3 to clarify the claim and therefore respectfully requests reconsideration and removal of this ground of rejection.

In this regard, Applicant respectfully avers that the Examiner has misconstrued the claims of the present invention or the disclosure of McMann. McMann teaches that the annular contact portion (22 in McMann) is bent away from the top surface of the top (19 in McMann). *See* McMann at Fig. 1 and Col. 2, lines 6-14 (“**The lowermost internal flange or annulus** 22 is somewhat thicker and heavier than the other two flanges and is shaped as shown, **being beveled or flared outwardly** as indicated at 24 to

facilitate its application to the container, and also to provide a space indicated at 25 for convenient insertion of the fingers when the closure is to be pulled off or removed.”) (**emphasis** added). That is, McMann requires that the annular contact portion be bent away from the surface of the disc closest to the container contents. In contrast, Claim 3 as currently amended requires that the “annular contact portion [22 in figures] is adaptable from a first position wherein it is bent from the two fixing portions [23, 24] **toward** said second surface to a second position wherein it is bent from the two fixing portions toward said rear surface.” *See, e.g.*, Figure 8 which shows that the annular contact portion [22] is bent towards the surface of the cover plate (i.e., the disc) [10] that is away from the container contents, i.e., the second surface.

Additionally, because the annular contact portion is bent towards the top surface of the disc when the container cover is in its first position, when the container cover is in use, the annular contact portion must be bent inside out and turned upside down around an upper rim portion of the container in order to be placed into the second position. *See, e.g.*, Figure 8 compared with Figure 10. In contrast, McMann does not teach that the container cover must be bent inside out/turned upside down around a rim portion because McMann teaches that the contact portion is already pointed towards the container. *See* McMann at Figs. 1-4. As is also claimed in Claim 3 as amended, Figures 8 and 10 of the present application show that the annular contact portion is adaptable from a first position (shown as being located on the top of the cover in Figure 8) to a second position (shown as being located underneath the cover in Figure 10). Nowhere in McMann is such a feature disclosed, and the amendments to Claim 3 are intended to more specifically point out this feature. If the Examiner still believes the claim language is unclear, the

Examiner is invited to contact the undersigned in order to discuss acceptable claim language.

Finally, McMann requires the presence of a flange so that the container cover can grip the underside portion of a rim of the container to be covered. *See, e.g.*, McMann at Col. 2, lines 14-22 (“The top inner portion of the flange 22 is shaped to cooperate closely with the undercut or shoulder 16 of the rim and this portion is so spaced relatively to the underface of the middle flange 21 that the web or membrane or connection portion 26 between the flanges must be stretched somewhat to enable them to engage respectively with the portions 16 and 14 of the rim.”); *see also* Fig. 2 at reference numerals 16 and 22. In contrast, the present invention does not require or recite the presence of flanges located on the contact portion.

With respect to new Claim 13, Applicant notes that McMann is only suitable for covering a container of one size. More specifically, because of the placement of the flange (22) as discussed above, only bottles/jars with a specific neck thickness can be used with the invention of McMann. In contrast, Claim 13 recites that the container cover can be applied to a container irrespective of the type or size of the container. *See also* published application at ¶¶ [0001] and [0009].

Based on the above arguments, Applicant respectfully submits that the claims of the present invention are not anticipated by the disclosure of McMann. Therefore, Applicant respectfully requests reconsideration and removal of this ground of rejection. Applicant believes that no fee is due for the addition of the new claims. Notwithstanding, the Commissioner is authorized to charge Deposit Account No. 08-1540 for any fees due or to credit any overpaid fees.

Based on the above, Applicant respectfully submits that the claims of the present invention are in proper form for allowance. Favorable consideration and early allowance are therefore respectfully requested and earnestly solicited.

Respectfully submitted,

/matthew j. solow/

Matthew J. Solow  
Reg. No. 56,878

**MAILING ADDRESS**

Hedman & Costigan, P.C.  
1185 Avenue of the Americas  
New York, NY 10036  
(212) 302-8989